IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1143 of 1991

with

CRIMINAL APPEAL No 680 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

JAY KHODIYAR INDUSTRIES

Appearance:

1. Criminal Appeal No. 1143 of 1991
   MR IM PANDYA, ADDL. PUBLIC PROSECUTOR for Petitioner No. 1
   MR DK MODI for Respondent No. 1
   MR MD MODI for Respondent No. 1
2. Criminal Appeal No. 680 of 1992
   MR DK MODI for Petitioner No. 1
   NOTICE SERVED for Respondent No. 1
   MR IM PANDYA, ADDL. PUBLIC PROSECUTOR for State

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 10/03/2003

COMMON ORAL JUDGEMENT

1. Both these appeals arise from the judgment delivered by learned Judicial Magistrate, First Class, Prantij, Dist. Sabarkantha dated 24th September 1991 in Criminal Case No. 1428 of 1988. By the said judgment, the learned Magistrate has acquitted original accused Nos. 1 and 2, viz. Mohanlal Devshankar Joshi -the vendor, and Jay Khodiyar Industries, Botad -the Company, and convicted original accused No.3, Rajeshkumar Chandulal Shah. It may be noted that the State has not preferred any appeal against the order of acquittal passed in favour of the original accused No.1, Mohanlal Devshankar Joshi and qua him the judgment and order of acquittal passed by the learned Magistrate have become final. Criminal Appeal No. 680/92 has been preferred by the convicted accused: Rajeshkumar Chandulal Shah. Initially, the said appeal was filed before the Sessions Judge, Sabarkantha at Himatnagar, and it was numbered as Criminal Appeal No. 58 of 1991. Subsequently, upon the State filing Criminal Appeal No. 1143 of 1991 challenging the acquittal of original accused No.2: Jay Khodiyar Industries and admission of the said appeal, the Criminal Appeal pending before the Court of Session at Himatnagar filed by original accused No.3 was directed to be transferred to this Court, and upon transfer, it has been numbered as Criminal Appeal No. 680 of 1992. Both these appeals are heard together and they are now being disposed of by this common judgment.

2. All the original accused were prosecuted by Babubhai J. Patel, Food Inspector, being the complainant in the court of learned JMFC, Prantij, for the alleged commission of offences made punishable under the provisions of the Prevention of Food Adulteration Act, 1954 [hereinafter referred to as the Act] as well as the provisions of the Prevention of Food Adulteration Rules, 1955 [hereinafter referred to as the Rules]. According to the prosecution, the Food Inspector Mr. Patel, was notified by the State of Gujarat as Food Inspector for the entire area under the State Government, and in view of the authority conferred on him, he had, on 29th August 1988, gone to the shop of original accused No.1 at about 3.00 PM. One Mr. R.S. Patel, also a Food Inspector, was with him at that time. Original accused No.1 was dealing in selling food articles, such as Chilly Powder.

The Food Inspector expressed his desire to collect a sample of it for the purpose of analysis, and he gave intimation in writing to accused No.1 for collecting the sample from a stitched cloth bag containing Chilly Powder. On the said bag, there was `AG' Mark label, and it was shown to be of lot No. 37. The bag also showed the place of packing, i.e. Jay Khodiyar Industries, Botad, indicating date of packing as 10th August 1988 and the expiry date as 18th January 1989. It weighed 10 kgs. The vendor, i.e. accused No.1, informed the Food Inspector that he had purchased the bag from Jay Khodiyar Industries, i.e. original accused No.2 and respondent of Criminal Appeal No. 1143/91, and it was kept in the same condition at the time when the sample was being sought to be collected. The Food Inspector, thereafter, with the aid of a special implement, pierced the bag and took out the requisite quantity of Chilly Powder for the purpose of analysis. He took out 600 gms. of Chilly Powder, and he paid the price of the same to the vendor. He, thereafter, divided the Chilly Powder into three equal parts of 200 gms. each, and filled it in 3 bottles of glass, which were dry moisture-less, clean and transparent, and thereafter applied the lid and tightened it. It is the case of the prosecution that all the three sample bottles were thereafter packed in the manner prescribed under the rules, and on the slip pasted on the sample bottles, signatures of the panchas, accused No.1 and the Food Inspector were taken. After preparing the three samples, the Food Inspector sent one sample to the Public Analyst at Baroda for analysis, and sent the two remaining samples to the Local Health Authority. On receiving the report from the Public Analyst it was found that the sample was adulterated one. The Food Inspector, therefore, placed all the relevant record before the Local Health Authority to obtain sanction to prosecute the accused. On receiving the sanction from the competent authority, the Food Inspector lodged a complaint in the Court of learned JMFC, Prantij and in consonance with the provisions of section 13 of the Act, he despatched a copy of the complaint along with a copy of the report of the Public Analyst to the accused No. 1 intimating him that if he so wished, he could make an application to the learned Magistrate for getting the remaining samples analysed by Central Food Laboratory. In response to the summons issued by the learned Magistrate, all the accused appeared before the learned Magistrate to defend their interest.

3. At the trial, the learned Magistrate framed Charge against the accused at Exh. 58 for offences punishable under sections 2(i.a) (a), (b), (c), (j), and

(l) of the Act read with rule 23 of the Rules, and also for offences punishable under section 7(i) and (v) of the Act, both read with section 16 of the Act. The Charge is dated 4th September 1990. The accused pleaded not guilty, and claimed to be tried.

4. In support of its case, the prosecution has examined witnesses and has also placed reliance on documentary evidence.

5. Patel Babubhai Joitaram is P.W. 1, and his evidence is at Exh. 27. In the examination-in-chief, he has stated that he was appointed as a Food Inspector and was notified as a Food Inspector for all the local areas of the State of Gujarat. In support of his case, he has also produced a copy of the notification, which is at Exh. 28. He has further stated that on 29th August 1998, he and R.S. Patel, who was also discharging duty at Kalol as Food Inspector on that day, went to Ambika Kirana Stores, and collected chilly powder from a bag bearing lot No. 37 and having 'AG' mark, for the purpose of analysis, and the same was subsequently sent to the Public Analyst at Baroda. He has further stated that on receiving the report from the Public Analyst opining that the sample was adulterated, sanction was sought from the Local Health Authority to prosecute the offenders. He has further stated that on 22nd November 1988, the Local Health Authority, viz. Mr. Rawal, accorded sanction, which is produced on record at Exh. 29. He has also stated that after lodging the complaint in the Court of learned Magistrate, in accordance with the provisions of section 13 (2) of the Act, notices with regard to the prosecution were despatched along with copies of the report of the Public Analyst to all the three accused. He has further stated that the notices were despatched by Registered AD Post, and acknowledgment receipts have been produced on record at Exhs. 33 and 34.

5.1 In the cross-examination by the defence, he has stated that before according sanction, the Local Health Authority had not called him but Food Inspector Mr. R.S. Patel was called by the Local Health Authority. He has denied the suggestion made by the defence that no authority has been conferred upon Mr. Rawal to accord sanction under section 20 of the Act. He has also denied the suggestion made by the defence that the original accused No. 3 was not the Manager of accused No.2 Company. He has further denied that the accused No. 2 and 3 had not received the copies of the report of the Public Analyst.

6. Prosecution has also placed reliance on the

evidence of PW. No. 2, Ratilal Shivramdas Patel, Exh. 38. This witness has in detail described the manner in which the sample was collected from the shop of accused No.1. He has stated that the sample was drawn from a stitched cloth bag containing chilly powder, bearing lot No. 37 and also 'AG' Mark label No. B/7/069900. He has further stated that after packing the sample in the manner prescribed under the Rules, he had despatched one sample to the Public Analyst at Baroda, and he had also sent the seal impression along with the copy of the memorandum through a Helper. According to him, the remaining two samples were sent to the Local Health Authority. He has stated that since the sample was collected from the sealed cloth bag, which accused No.1 had purchased from Jay Khodiyar Industries, Botad, it was also impleaded as an accused. He had also seized the bill by which the accused No. 1 had purchased the bag of lot No. 37 from the said Jay Khodiyar Industries. He has stated in his evidence that accused No. 3 was found to be a nominee of accused No.2, appointed under the provisions of sub-section 2 of section 17 of the Act, and in support thereof, he has produced a certified copy of the nomination of accused No.3. He has further stated that he had placed all the relevant papers before the Local Health Authority for obtaining its sanction under section 20 of the Act, to prosecute the accused, and on receiving the sanction, a complaint was duly filed in the Court of learned Magistrate at Prantij.

6.1 In the cross-examination by the defence, he has denied that no notice as envisaged under rule 12 of the Rules was ever given to the accused Nos. 2 and 3. He has also denied the suggestion that accused No. 3 was not a nominee of accused No.2. He has stated that he has personally gone to the Local Health Authority with all the relevant papers pertaining to this case, and handed them over to the Local Health Authority. He has further stated that he was thereafter not called by the Local Health Authority.

6.2 In the cross-examination by the advocate for the accused no.1, he has admitted that the cloth bag of top brand chilly powder from which the sample was collected, was having 'AG' mark and on the label of the bag, there was seal and signature of the 'AG' mark authorities.

6.3 In the cross-examination by the advocate for the accused No.2, he has further stated that on each slip which was pasted in the sample bottles, code number and serial number of the Local health Authority was written. He has, however, denied the suggestion of the defence that the report of the Public Analyst was false and the article complained of was without any adulteration. He has further denied that the accused No. 2 and 3 have

been wrongly joined in the prosecution. This witness has produced on record at Exh. 47 the panchnama of the proceedings, which took place at Ambika Kirana Store while collecting the sample. He has placed on record the report of the Public Analyst, copies of the memorandum etc.

7. If the report of the Public Analyst is perused, it shows that it is dated 9th September 1988. The Report Number is Q.3-703-88. It further shows that the sample contained artificial colour matter, i.e. Pink and Orange coloured non-permitted oil soluble coal-tar colour. The microscopic examination revealed that the sample was mixed with huge quantity of wheat, maize and rice starch. In the opinion of the Public Analyst, the sample of Chilly powder does not conform to the standards and provisions laid down under the Rules.

8. Amrutbhai Punjabhai is PW. 3 [who has been wrongly shown as PW.2], and his evidence is at Exh. 68. He has acted as a pancha at the time of the collection of the sample by the Food Inspector. He has supported the prosecution, and has stated in his evidence that he was called by the Food Inspector to act as Pancha and he had remained at the shop of the accused No.2 till the formalities of collection of sample had lasted. He has also identified his signature on the bottle containing sample of chilly powder, the panchnama, notice at Exh. 42, the bills at Exh. 45 and 46 etc.

8.1 In the cross-examination by advocate for accused No.1, he has admitted that the cloth bag containing chilly powder was having laced seal and the name of Jay Khodiyar Industries, Botad was printed on it. He has further stated that the chilly powder was having 'AG' mark.

8.2 In the cross-examination by advocate for the accused No.2, he has denied that on the day when the sample was purchased by the Food Inspector, it was given to the Food Inspector by servant of accused No. 1. He has further stated that he did not remember whether the bottles in which the samples were filled were cleaned at the shop of the accused No.1. He has again denied the suggestion that since he was purchasing goods from the accused No.1, he was giving false evidence in his favour.

9. The next witness is Harsukhrai Rawal at Exh. 71, who, at the relevant time, was the Local Health Authority appointed by the State of Gujarat. He has stated in the examination-in-chief that at that time both R. S. Patel and B.J. Patel were working under him along with other Food Inspectors. He has further stated that on 29th

August 1988, R.S. Patel had collected the sample of top brand 'AG' mark chilly powder from M/s. Ambika Kirana Store, from a cloth bag on which lot No. 45 was indicated. The sample was thereafter sent for analysis to the Public Analyst at Baroda and he has submitted his report, which was numbered as Q-3/702/88 dated 9.9.1988. He has further stated that the Public Analyst had found that the sample contained non-permitted coal-tar colour and the sample was adulterated. He has also stated that he had granted sanction to prosecute all the three accused.

9.1 In the cross examination by the defence, he has denied the suggestion that he had not applied his mind while granting sanction. He has further stated that he had not made any inquiry whether the Food Inspector had seized the cloth bag containing the offending article.

10. The learned Magistrate, at the end of the recording of the oral evidence, put all the incriminating circumstances appearing against the accused in evidence to them, while recording the statements under section 313 of the Cr. P.C. It appears from the record that the accused No.1 had taken up the defence of warranty as provided under section 19 (2) of the Act. According to him, he had purchased the offending article in a sealed cloth bag from accused No.2, and at the time of visit of the Food Inspector, it was lying in the same condition in the shop. He has, therefore, pleaded that he was not responsible for the adulteration of the article. The learned Magistrate, at the end of the trial, came to the conclusion that the article in question was adulterated. However, he acquitted accused No. 1 and 2 but convicted accused No.3 for the aforesaid offences since he was the nominee appointed by the accused No.2 in accordance with the provisions of sub-section (2) of section 17 of the Act, and sentenced him to suffer rigorous imprisonment for two years, and to pay a fine of Rs.1000/-, in default, simple imprisonment for three months. In these circumstances, the present appeals have come before me.

11. I have carefully gone through the entire record of the case with a view to re-appreciate the evidence. I have also carefully considered the submissions made by learned Advocate Mr. Modi appearing for the appellant in Criminal Appeal No. 680 of 1992 and respondent of Criminal Appeal No. 1143 of 1991, and Mr. I.M. Pandya, learned Additional Government Pleader for the State, which is appellant in Criminal Appeal No. 1143/91 and respondent No.2 in Criminal Appeal No. 680 of 1992.

12. According to Mr. Modi, the prosecution had

hopelessly failed to prove the guilt of accused No.3 (appellant of Criminal appeal No. 680/92), and the learned Magistrate ought not to have convicted him for the aforesaid offence. He has further submitted that the sanction accorded by the Local Health Authority is defective inasmuch as he has no authority to grant such sanction, nor does he has any power to direct the Food Inspector to lodge complaint. He has further submitted that the vital evidence, i.e. the bag containing the chilly powder bearing label of accused No.2, is not seized, and produced by the Food Inspector on record and in the absence of such record and evidence, accused No.2 and 3 cannot be connected with the crime. He has lastly submitted that considering the evidence of Mr. Rawal, it clearly appears that the report of the Public Analyst which form the basis of the prosecution, pertain to some different sample, and not the sample in question, and, therefore, the entire prosecution case fails on this sole ground.

13. As against this, Mr. Pandya, learned Additional Public Prosecutor supported the judgment of the learned Magistrate to the extent it convicts accused No.3. He has further submitted that the learned Magistrate has committed an error in acquitting accused No.2, the Company, because by virtue of section 17 (1) (b) of the Act, the Company would also be held liable for committing this offence, and the learned Magistrate ought to have convicted the accused No. 2 for this offence.

14. A perusal of the evidence on record, and in particular the report of the Public Analyst, show that the food article which was sent to him for analysis was found to be adulterated as it contained non-permitted coal-tar colour. Not only that, but it also contained foreign substance like wheat, maize and rice starch. There is, therefore, no doubt in mind that the sample which was analyzed by the Public Analyst was adulterated one. However, the question that remains to be decided is, whether the prosecution has proved that it was the very sample which was collected by the Food Inspector on 29th August 1988 from the shop of accused No.1, from the cloth bag of lot No. 37 that was found to be adulterated?. Though the evidence of the Food Inspector reveals that the sample which was sent to the Public Analyst was drawn from a cloth bag of lot No. 37, and the report which has been produced on record pertains to the said sample, when the evidence of Mr. Rawal, Local Health Authority is perused, he has very clearly stated that the bag from which the sample was collected, and the other bags lying in the shop, belonged to lot No. 45.

Mr. Rawal in his deposition has also referred to report of the Public Analyst bearing No. Q-3/702/88 dated 9th September 1988. If this is compared with the report which is produced on record by the prosecution at Exh.55, it shows that the Report Number is Q.3-703-88 dated 9th September 1988. This will clearly show that the lot number as well as the report number stated by Mr. Rawal are totally different. It, therefore, creates a doubt whether Mr. Rawal had given sanction in respect of the sample which was drawn from the lot No. 45 and that too on the basis of report bearing No. Q-3/702/88. If that be so, then it goes to the root of the matter, and the entire prosecution case falls to the ground for want of sanction. The evidence of Mr. Rawal nowhere mentions the bag belonging to lot No.37, nor does it mention report bearing number Q-3/703/88. In this view of the matter, the only inference that can be drawn is that the material Mr. Rawal had perused was with regard to the sample drawn from bag belonging to lot No.45, and not lot No. 37 from which the sample was drawn in the instant case. Such a discrepancy would certainly give a fatal effect to the prosecution case, and it is bound to fail on this ground alone.

15. Since in my opinion there is a fatal defect in the prosecution case and the conviction resultant to such prosecution cannot be said to be a legal one and it is required to be quashed, there is no need for me to enter into other controversies raised by the learned counsel.

16. In view of the aforesaid discussion, Criminal Appeal No. 680/92 is hereby allowed. The conviction and order of sentence passed by the learned JMFC, Prantij dated 24th September 1991 in respect of original accused No. 3, i.e. the present appellant, is quashed and set aside. I am informed that the appellant is on bail. His bail bonds, therefore, stand cancelled.

16.1 So far as Criminal Appeal No. 1143 of 1991 filed by the State is concerned, in view of the aforesaid discussion, it stands dismissed.

[AKSHAY H.MEHTA, J.]

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